

FILED
COURT OF APPEALS
DIVISION II
2018 SEP 27 AM 11:04
STATE OF WASHINGTON
BY
DEPUTY

IN THE COURT OF APPEALS, DIVISION II OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent (Plaintiff),

v.

MATTHEW RICHARD MORASCH,

Appellant (Defendant),

Court of Appeal Case No. No. 50810-9-II

Clark County Superior Court Cause

No. 15-1-01170-7

I. STATEMENT FOR ADDITIONAL
GROUNDS FOR REVIEW

TO: CLERK OF THE ABOVE, AND/OR ENTITLED Panel, Counsel for and opposing
counsel:

I. IDENTIFY OF PARTY AND STATEMENT OF ADDITIONAL GROUND SOUGHT
FOR REVIEW.

Comes now, Matthew Richard Morasch, appellant, and provides the court my
additional Grounds for review. I have set out 4 additional grounds for review in my
matter that occurred at trial.

II. FACTS RELEVANT TO STATEMENT FOR ADDITIONAL GROUND FOR REVIEW

As the Appellant I reviewed facts in the record and the procedural history in this matter.
I have reviewed the Brief prepared on my behalf. I was provided 2714 pages of the
transcript. I was present during all hearings prior to the trial, at the trial and for the

1. Statement of Additional Grounds
for Review

APPELLANT Mathew Morasch
9923 SE EVERGREEN HWY
Vancouver, WA 98664

1 post trial sentencing. I reviewed my Appellate Attorney's brief on appeal. I am asking
2 that the court consider reviewing additional issues not raise by my appellate attorney.

3
4 **A. CRR 3.5 HEARING AND FINDING OF ADMISSIBILITY:**

5 On April 1, 2016, I was present for a CrR 3.5 Hearing where my attorneys had filed
6 Motion(s) to Suppress my statements taken during an interview with Officer Landas of
7 the Vancouver Police Department. (See pages 502 to 512 of the transcript.) The
8 Court made findings that my statements were admissible on April 20, 2016. (See
9 pages 502 to 512 of the transcript.) I believe that these findings were made in error.
10 The record established through the testimony was that the Dean of Students, Mark
11 Castle came to my classroom when I had students told me to leave my classroom and
12 to go with Officer Landas. I followed Officer Landas as I was directed to do by Mark
13 Castle and I was interviewed by him. Mark Castle was sent to my classroom by my
14 principal Lisa Emmerich. My phone was also seized within moments of entering
15 Officer Landas on school office. I did not testify at trial. My statements to Officer
16 Landas were admitted at trial. The prosecutor used my statements during his closing
17 statement. These facts were not addressed by my appellate attorney.
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22 **B. THE SEIZURE OF MY PHONE WAS PREDICATED UPON REASONABLE**
23 **SUSPICION:**

24 On April 1, 2018, Officer Landas testified that he had "reasonable suspicion" of
25 criminal activity and that was why he wanted to seize my cell phone (See pg. 360 to
26 363 of the Transcript of the April 1, 2016 Hearing) On August 19, 2016, the trial court
27

1 found that the information that Officer Landas possessed at the time he seized my
2 phone constituted probable cause. (See pages 667 to 671 of the transcript.) On
3 August 19, 2016, there was no reference by the court to the facts from the April 1,
4 2016 testimony regarding Officer Landas' belief that he only had reasonable
5 suspicion. (See pages 667 to 671 of the transcript.) My phone was searched and
6 evidence from my phone was used at trial. This issue was not raised in the briefing
7 file by my appellate attorney.
8

9
10 **C. SUFFICIENCY OF THE EVIDENCE ON COUNT I WAS RAISED IN A CrR**
11 **7.4 MOTION FILED ON JULY 31, 2018.**

12 On July 31, 2018, my trial attorney filed a CrR 7.4 to dismiss count one for sufficiency
13 of the evidence. (see attached motion filed 7 31 2017). The state never filed a
14 response to the motion. (See pages 2622 to 2623 of the transcript.) The motion
15 related to the testimony of Eric Thomas and the admission of exhibit 37 and exhibit 38.
16 On August 29, 2018, the court denied the motion. (See pages 2639 to 2641 of the
17 transcript.) The motion was based upon a failure to establish the elements of the
18 offense based upon testimony provided by an expert witness who provided incorrect
19 coordinates to show that a video was taken from a specific location. The video was
20 exhibit #40. Exhibit #37 was created to show a location of where the crime occurred
21 based upon geo data taken from exhibit #40. Eric Thomas was the only witness to
22 provide testimony on this issue. The coordinates were the basis of the opinion
23 provided by Eric Thomas as to where the video was created. The state apparently
24 offered an exhibit, #37, that contained incorrect information. Eric Thomas indicated
25
26
27

1 that he had used the coordinates from Exhibit #38 of 45°46'54.12"N 122°33'28.08"W.
2 to create Exhibit #37. (See pages 2622 to 2623 of the transcript.)

3 The record is clear, Mr. Thomas apparently entered the wrong coordinates into the
4 Google map function. i.e. the coordinates of 45°46'54.1 "N 122°33' 26.10"W. Exhibit
5 #38 (45°46'54.12"N 122°33'28.08"W) and those used to create Exhibit #37
6 (45°46'54.1 "N 122°33' 26.10"W. don't match.
7

8 No witness at trial testified to ever having been located at a Goodwill or having seen
9 the video contained in exhibit # 40. No witness offered any testimony that the floor
10 was the floor of a Goodwill located in Battleground. No witness offered any testimony
11 that the ceiling was the ceiling a Goodwill. There is no testimony or evidence relating
12 to Exhibit # 40, other than that provided by Eric Thomas. Eric Thomas testified that he
13 has a limited law enforcement commission, and in summary does not interview
14 witnesses and only engages in analysis of evidence in his lab.
15

16 At trial Count 1, specifically Jury Instruction 13, provided what elements must be
17 proven and these are set out below:
18

- 19 (1) That on or about April 27, 2015, the defendant knowingly viewed,
20 photographed, or filmed the intimate areas of a second person;
21 (2) That the viewing, photographing, or filming was for the purpose of
22 arousing or gratifying the sexual desire of any person;
23 (3) That the viewing, photographing, or filming was without the second
24 person's knowledge and consent;
25 (4) That the intimate areas of the second person were viewed,
26 photographed, or filmed under circumstances where he or she had a
27 reasonable expectation of privacy, whether in a public or private place;
and
(5) That any of these acts occurred in the State of Washington.

In order to prove element #5, the coordinates taken from exhibit #37, the

1 of was aware of employee policy that provided that a failure to answer questions in
2 an "internal department investigation" is prohibited. *Id.* The policy concludes by
3 stating that an officer who fails to abide by DeKalb County Police Department rules
4 can be disciplined by being terminated from employment. *Id.*

5 Officer Thompson was indicted for the murder. Officer Thompson moved to
6 suppress statements he made in the course of an internal police investigation
7 claiming a violation of his *Garrity* rights. The motion to suppress was granted and the
8 State appealed. The Georgia State Supreme Court upheld the trial court on the
9 ruling suppressing the statements. The *Thompson* court stated the following
10 analysis in support of the holding:

11 Factors that a court may consider [in evaluating whether an employee's
12 statement to investigators was coerced] include ... whether the State actor
13 made an overt threat to the defendant of the loss of his job if he did not speak
14 with investigators or whether a **statute**, rule, or ordinance of which the
15 defendant was aware provided that the defendant would lose his job for failing
16 to answer questions. **If no express threat is present, the court may**
17 **examine whether the defendant subjectively believed that he could lose**
18 **his job for failing to cooperate and whether, if so, that belief was**
19 **reasonable given the state action involved. *Thompson v. State*, 288 Ga.**
20 **165, 167, 168, 702 S.E. 2d 198(Ga. 2010)**

21 The Existence of Coercion is evaluated by examining the Totality of the
22 Circumstances. When evaluating the question of whether or not one is subject to a
23 coercive environment, the court must look at the totality of the circumstances. Any
24 other standard would be contrary to logic, contrary to the developing case law in this
25 area, and contrary to Article 1, Sec. 7 of the Washington State Constitution.

26 *No Warning must be Explicitly Provided: Garrity and Miranda* are simply two
27 sides of the same coin – compulsory self-incrimination under the Fifth Amendment.
The parallels between *Garrity* and *Miranda* are not only obvious, they are repeatedly
spelled out in the cases that track the development of what most of us now known as
the *Garrity* rule. The existence of one's rights against compulsory self-incrimination

1 Specifically, in my matter the argument follows as far as the trial court was
2 concerned that I could be demoted to janitorial staff, but as long as termination is not
3 at issue, there is no coercion. It defies all logic. Further, the developing caselaw in
4 this area dictates that the Court must examine the totality of the circumstances. In
5 the recent case of *State v. Aiken*, 646 S.E.2d 222 (2007), the Georgia Supreme
6 Court examined the history of *Garrity* and its progeny. As set out above The *Aiken*
7 case was cited as the cornerstone of *Thompson v. State*, 288 Ga. 165, 702 S.E. 2d
8 198 (Ga. 2010) They found that, after *Garrity*, a number of cases arose in which an
9 implied threat implicated *Garrity*. 646 S.E.2d at 224.

10 After examining the varying standards, the Georgia Court held:

11 [B]ecause the Supreme Court in *Garrity* employed the totality-of-the-circumstances
12 test for evaluating whether the defendant's statement was coerced, and because this
13 State's courts have vast experience applying this test,[19] we hereby adopt that test
14 for determining whether the statements that a public employee makes during an
15 investigation into his activities are voluntary. *Aiken*, at 225.

16 In addition to enunciating the Totality of Circumstances Test, the *Aiken* Court specifically
17 noted that, in evaluating whether or not the employee's belief was objectively reasonable,
18 **the court may examine whether the defendant was aware of any statutes,**
19 **ordinances, manuals, or policies that required cooperation and provided generally,**
20 **without specifying a penalty, that an employee could be subject to discipline for**
21 **failing to cooperate.** *Aiken*, at 226 (emphasis added). This language from *Aiken* was
22 specifically cited in *Thompson v. State*, 288 Ga. 165, 167,168, 702 S.E. 2d 198 (Ga.
23 2010).

24 In summary, I was a public employee. I was at work in my classroom and the Dean of
25 Students, Mark Castle approached me, unannounced and directed me to step outside, i.e.
26 leave the class I was about to begin my regular assignment of instruction. In the hallway I
27 was hand delivered to Vancouver Police Officer Nick Landas. This had been pre-
arranged by joint action between Ms. Emmerick, Mr. Castle and Officer Landas. Officer
Landas was aware that there was an active Evergreen Administrative investigation when
he undertook to enlist Mr. Castle to secure me from my classroom. I clearly went with

1 Officer Landas as I was aware that my administration had arranged for coverage for his
2 class and had directed me to go with Officer Landas. I walked into Officer Landas' School
3 Resource Officer office as he was complying with the directive of a supervisor, Mr. Castle.
4 I reasonably believed that I was required to respond to Officer Landas and the failure to
5 engage with him would be insubordination.

6 The court allowed my coerced statements to be admitted in error. My coerced statements
7 should have been suppressed. Relying on my statements in closing was a significant
8 factor in my conviction as to Count 1, Count 2 and/or Count 3.

9 **B. The Seizure of my phone was upon reasonable suspicion, not probable**
10 **cause, and therefore my phone was unlawfully seized.**

11 The Fourth Amendment of the U.S. Constitution requires that:

12 The right of the people to be secure in their persons, houses, papers, and effects, against
13 *unreasonable searches and seizures*, shall not be violated, and no warrants shall
14 issue, but upon **probable cause**, supported by oath or affirmation, and particularly
15 describing the place to be searched, and the persons or things to be seized.

16 For constitutional purposes, a *seizure* occurs when there is meaningful interference with
17 an individuals' possessory interest in property and a governmental official exercises
18 dominion and control over the property possessed. The Fourth Amendment and article
19 I, section 7 of our state constitution require that "warrants describe with particularity the
20 things to be seized." *State v. Riley*, 121 Wash.2d 22, 28, 846 P.2d 1365 (1993); *State v.*
21 *Perrone*, 119 Wash.2d 538, 545, 834 P.2d 611 (1992). This requirement "eliminates the
22 danger of *unlimited* discretion in the executing officer's determination of what to seize."
23 *Perrone*, 119 Wash.2d at 546, 834 P.2d 611. Courts examine the purpose of the
24 "particular description" requirement to determine whether the description is valid. These
25 purposes include (1) preventing exploratory searches, (2) protecting against "seizure of
26 objects on the mistaken assumption that they fall within" the warrant, and (3) ensuring
27 that probable cause is present. *Id.* at 545, 834 P.2d 611.

Four years ago, the United States Supreme Court in *Riley v. California*, 134 S. Ct. 2473,
2477 (2014), made a landmark decision regarding personal privacy and the application to

1 cell phones. In *Riley*, the Court reversed a lower court ruling and unanimously held that,
2 in general, in search incident to arrest a cell phone seized and searched without a
3 warrant is a violation a constitutional violation. The Court found that cell phones are both
4 quantitatively and qualitatively different from other objects that an arrestee might have on
5 their person. *Id.* at 2489.

6 The *Riley* court stated that:

7 In this day and age, "[t]he term 'cell phone' is itself misleading shorthand;
8 many of these devices are in fact minicomputers that also happen to have the
9 capacity to be used as a telephone."

10 As a consequence, the Court refused to extend the search incident to lawful arrest
11 exception to the digital contents of cell phones. *Id.* at 2485. In *Riley*, the Court
12 considered two cases presenting "a common question." *Id.* at 2480. In the *Riley*, a San
13 Diego police officer arrested David Riley after discovering firearms stashed in a sock
14 under his car's hood. While searching Riley incident to his arrest, an officer found
15 evidence of Riley's association with the "Bloods" street gang. Suspicions aroused, the
16 police seized and searched Riley's smart phone without a warrant, uncovering further
17 evidence of gang ties. They also discovered records that placed Riley's phone at a
18 shooting three weeks earlier. Rile moved to suppress the fruits of this search and
19 seizure and the trial court judge denied a motion to suppress after finding that the search
20 fell within the scope of the search- incident-to-arrest exception. Riley was convicted of
21 assault with a semiautomatic firearm, shooting at an occupied vehicle, and attempted
22 murder. The California Court of Appeal affirmed. In two paragraphs, Judge McDonald
23 disposed of Riley's cell phone search claims on the basis of the California Supreme
24 Court's decision in *People v. Diaz*, 12. 244 P.3d 501 (Cal. 2011), which held that "a
25 warrantless search of the text message folder of a cell phone" taken from a person during
26
27

1 his arrest was constitutional under the search-incident-to-arrest exception. The *Riley*
2 panel agreed with the trial court that Diaz controlled, and the defendant's matter moved
3 through the federal system and was heard by the United States Supreme Court. The
4 companion matter was related to another defendant from the First Federal Circuit, Brima
5 Wurie.
6

7 *Riley* broke new ground as to how the Fourth Amendment applies in the digital age.
8 In October of 2014, a Virginia Circuit Court confronted a related issue when the
9 Commonwealth sought to compel the defendant to produce the passcode or fingerprint to
10 his encrypted smartphone. *Commonwealth of Virginia v. Baust*, No. CR14-1439, at 1 (Va.
11 2d Cir. Ct. Oct. 28, 2014). In the Virginia case, the defendant, David Baust, had allegedly
12 assaulted a victim and there was some evidence that Mr. Baust's phone may contain
13 evidence of the assault. The police obtained and executed a search warrant, retrieving
14 (among other items) the smart phone and later tried to compel the defendant to provide
15 his password. *Id* at 2. The court in *Virginia v. Baust* found compelling the password to be
16 constitutionally impermissible.
17

18
19 In the instant case my phone was seized by Officer Landas. My personal cell phone was
20 seized by Officer Landas on what he testified was "reasonable suspicion of criminal
21 activity." The case law, not cited to above is clear that Officer Landas' understanding of
22 the factual and legal requirements are the final gravamen on the factual legal analysis.
23 However, in the instant case Officer Landas' did not have sufficient facts in his
24 possession to justify the seizure of my I-phone.
25

26
27 Examining closely the facts in Officer Landas' possession is necessary. Officer
Landas had viewed a digital image on a screen that at best 4 square inches, i.e. a 1x4

1 screen. The digital image attached to the subsequent search warrant is over twice the
2 actual size of the cell phone. It is impossible to determine what image is contained on my
3 phone. It was impossible to discern if the phone is video or photo mode. The photo by
4 itself is not sufficient to support a finding of probable cause.

5 The only other information Officer Landas had was as a result of his interview of
6 K.K.A.G. The minor female provided information as to the fact of her age, that she was
7 the person in the photo, and that she did not give me permission to take photograph's of
8 her. At this point there is only evidence I am holding my phone. This information does
9 not meet the requirements of seizure on probable cause. Officer Landas had not
10 contacted the person who actually took the digital image he had viewed to inquiry about
11 what they could actually see. He had not interviewed anyone who could have witnessed
12 the events. In the final analysis upon the above facts Officer Landas did not have
13 sufficient evidence to arrest me, and he certainly did not have sufficient evidence upon
14 which to justify **seizing** my personal cell phone.

15 Finally, my password was also the provided for a specific and limited purpose after
16 his phone had been seized. The use of the password and subsequent search of my cell
17 phone also violated of my fourth amendment rights.

18 It was error to admit any evidence taken from my unlawfully seized phone.

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24 **C. It was error to deny the CrR 7.4 motion; there was insufficient Evidence to**
25 **Support Count 1.**

26 The evidence presented in a criminal trial is legally sufficient to support a guilty
27 verdict if any rational trier of fact, viewing the evidence in a light most favorable to the

1 state, could find the essential elements of the charged crime beyond a reasonable doubt.
2 *State v. Longshore*, 141 Wash.2d 414, 420, (2000).

3 In my matter Count 1, specifically Jury Instruction 13 the elements to be proven are
4 set out below:

- 5 (1) That on or about April 27, 2015, the defendant knowingly viewed,
6 photographed, or filmed the intimate areas of a second person;
7 (2) That the viewing, photographing, or filming was for the purpose of
8 arousing or gratifying the sexual desire of any person;
9 (3) That the viewing, photographing, or filming was without the second
10 person's knowledge and consent;
11 (4) That the intimate areas of the second person were viewed,
12 photographed, or filmed under circumstances where he or she had a
13 reasonable expectation of privacy, whether in a public or private place;
14 and
15 **(5) That any of these acts occurred in the State of Washington.**

16 No rational trier of fact could conclude that element # 5 in instruction #13 had been proven
17 beyond a reasonable doubt as there was insufficient evidence to prove where the event
18 occurred. This is true even when viewing the evidence in a light most favorable to the
19 state. Count one was not proven. A video was taken this was exhibit #40. Coordinates
20 were associated with the video, and testimony regarding how these coordinates were
21 taken from the video and this was set out in Exhibit #38. However, no accurate location
22 was established. Incorrect coordinates were entered in Google, which spit a location.
23 This was exhibit #37. When you start with an incorrect premise you will always come to
24 an incorrect conclusion. This summarizes why the evidence was insufficient. The court
25 committed error in denying the CrR 7.4 motion. Count 1 should be dismissed.

26 **D. It was error to deny the CrR 8.3 motions to dismiss.**

27 For many months I had to waive my speedy trial rights in order to be provided discovery.
This was discovery the State had possessed and withheld from my attorneys.

1 I do not believe that I was able to enter a waiver of speedy trial intelligently when I was
2 unaware the materials were being withheld willfully by the state or their agents.
3

4 IV. CONCLUSION

5 In summary, I have provided the court with four additional assignments of error by
6 the court in my matter. This was and effort for me to provide an accurate Statement of
7 Additional Grounds to the court to allow for a more complete review of the errors committed
8 in my matter.
9
10
11

12 DATED this 25th day SEPTEMBER of 2018

13 RESPECTFULLY SUBMITTED:

14  mm
15 MATTHEW MORASCH
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26
27

APPENDIX

Attachment A 7/31/2017 Motion to Dismiss Count 1

1. Statement of Additional Grounds
for Review

APPELLANT Mathew Morasch
9923 SE EVERGREEN HWY
Vancouver, WA 98664

E-FILED**07-31-2017, 16:19****Scott G. Weber, Clerk
Clark County****RECEIVED****JUL 31 2017****Prosecutor's Office****IN THE SUPERIOR COURT FOR STATE OF WASHINGTON,
IN AND FOR THE COUNTY OF CLARK****STATE OF WASHINGTON**
Plaintiff,
v.
MATTHEW MORASCH,
Defendant.

No. 15-1-01170-7

1. DEFENDANT'S MOTION TO DISMISS COUNT 1 PURSUANT TO CrR 7.4
2. DECLARATION IN SUPPORT OF THE MOTION TO DISMISS
3. ARGUMENT IN SUPPORT

I. MOTION TO DISMISS PURSUANT TO CrR 7.4 a)(3)

COMES NOW the Defendant, by and through his counsel Alan E. Harvey, CrR 7.4 a)(3) insufficiency of the proof of a material element of the crime. The defendant is requesting the remedy of dismissal, which is required judgment if there was no proof of a material element of the crime.

The attorney for the Defendant, hereby submits the following motion pursuant to CrR 7.4 a)(3) and respectfully requests that the court grant the defendant's motion dismiss count 1 on the facts and argument set out below. Specifically, the defendant incorporates the facts set out in the record, the declaration in support,

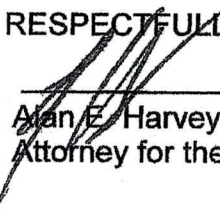
1. DEFENDANT'S MOTION TO DISMISS COUNT 1, PURSUANT TO CrR 7.4,
2. DECLARATION IN SUPPORT OF THE MOTION TO DISMISS
3. ARGUMENT IN SUPPORT

Alan E. Harvey, Partner
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1 and the exhibit at trial. The verdict of the Jury was rendered on July 19, 2017. The
2 motion was filed in compliance with CrR 7.4, CrR8.1(a), and CR 6.(a) and is timely.

3
4 DATED this 31th day of July, 2017

5 RESPECTFULLY SUBMITTED:

6 
7 Alan E. Harvey, WSBA #25785
8 Attorney for the Defendant

9 **II. DECLARATION OF COUNSEL IN SUPPORT OF MOTION**

10 Your declarant is the attorney for the defendant. I, Alan E. Harvey, make the
11 following statement for the purpose of and in compliance with CrR 7.4 a)(3) , and I
12 represent to the court that I have a good faith basis that there the following facts
13 occurred and will not be in dispute. This is supported by the declaration below and
14 the documents attached in the original motion filed in this matter.

15 I, ALAN HARVEY, make the following declaration:

- 16 1. I am the attorney for the defendant in the above-entitled action. I am
17 competent to testify in this matter, and all information set forth herein in
18 is based on my own personal knowledge of the record.
- 19 2. This Declaration is being offered in support of Defendant's Motion to
20 Dismiss Pursuant to CrR 7.4 a)(3).
- 21 3. The defendant proceeded to trial on an 3rd amended information filed on
22 July 10, 2017 in this matter. The allegations as to count 1 are that he
23 committed the crime of Voyeurism in "the County of Clark" in the "State
24 of State of Washington" or about April 27, 2015. {see Exhibit A).
- 25 4. I ordered and have reviewed a copy of the official audio and video
26 record of the trial was held before Hon Derek Vanderwood, in this
27 matter occurring between July 10, 2017 and July 19, 2017.

1. DEFENDANT'S MOTION TO DISMISS
COUNT 1, PURSUANT TO CrR 7.4,
2. DECLARATION IN SUPPORT OF THE
MOTION TO DISMISS
3. ARGUMENT IN SUPPORT

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1 5. During the trial, on July 14, 2017, in the late afternoon, the State called,
2 Eric Alvin Thomas, the only witness called to attempt to support the
3 factual basis that conduct surrounding the allegations contained in
4 Count 1, as to the element that the act occurred in the "County of Clark"
5 in the "State of State of Washington." This was the only testimony
6 provided as to this element. The testimony surrounded Exhibit 40, (an
7 video extracted from an I-phone seized in this matter), Exhibit 45 (a still
8 image extracted from Exhibit #40), Exhibit # 38, (a three page report
9 relating to the meta- data extracted from Exhibit # 40) and Exhibit # 37,
10 (a google map purporting to be the coordinates (Latitude and
11 Longitude). Eric Thomas in summary indicated that Exhibit #37 was
12 created from information taken from page 3 of Exhibit # 38, (the three-
13 page report relating to the meta- data extracted from Exhibit # 40). The
14 testimony on exhibit #38 was provided between 5:02:38 pm and 5:10:20
15 p.m on July 14, 2017.

16 Specifically, the testimony relating to page 3 of Exhibit #38 started at
17 5:08:58. The specific information about the location of the phone with
18 respect to the meta-data of the video was provided between 5:09:19
19 and 5:09:39. Eric Thomas testified that the report (Exhibit #38) on
20 page 3 shows the Latitude and Longitude of where the phone was
21 located when exhibit # 40, a video was taken. At 5:09:19, Mr. Thomas,
22 testified that the coordinates from the page 3 of Exhibit #38 indicate that
23 the video was taken at a location with the Longitude and Latitude
24 (Exhibit #38) specifically, "45 degrees 46 minutes and 54.12 seconds
25 North and 122 degrees, 33 Minutes and 28.12 seconds West"
26 (45°46'54.12"N 122°33'28.08"W). (see attached Exhibit #C and E)

27 Between 5:10:23 p.m. 5:12:13 minutes Mr. Vitosovic engaged in the
following exchange with Mr. Thomas with respect to Exhibit #37 (a
Google Map with the Coordinates of 45°46'54.1 "N 122°33'26.10"W.
(see attached Exhibit #B and E)

L.V. I am showing what has been marked for identification as state's
#37, and do you recognize that Item?

E.T. I do.

L.V. And what does that appear to be?

E.T. This is a screen shot of putting degree those minutes and
seconds into google maps.

L.V. Did you get receive a result?

1. DEFENDANT'S MOTION TO DISMISS
COUNT 1, PURSUANT TO CrR 7.4,
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1 E.T. I did.

2 L.V. And does that screenshot appear to be a true and accurate
3 depiction of the result you achieved on inputting that data?
4 (45°46'54.1 "N 122°33'**26.10**" W)

5 E.T. It does.

6 L.V. State seeks to admit 37 into evidence

7 Court: Mr. Harvey?

8 A.H. No objection. your honor,

9 Court: Exhibit #37 is admitted.

10 L.V. and Publishing 37 to the jury.

11 And if you could indicate to the jury what the result was of you
12 imputing these coordinates?

13 E.T. Yes, the little red pen designates where google maps located
14 that and it is right next to the building of Goodwill at NW 1st way
15 and NE 112 avenue, in Battleground.

16 L.V. Is would hat in Clark County Washington?

17 E.T. Yes, that is in Clark County Washington. 5:12:13 minutes.

18 After, the exchange set out above, Mr. Vitasovic made a
19 reference to earlier testimony where Mr. Thomas had used decimal
20 coordinates with respect to Google maps and referred to percentages of
21 error. The testimony relating to the creation of Exhibit #37 was that it
22 was input in Degrees, Minutes and Seconds. There is no testimony
23 relating to a decimal conversion of Degrees, Minutes and Seconds with
24 respect to the creation of Exhibit #37. There is no testimony to explain
25 why the coordinates 45°46'54.12"N 122°33'**28.08**"W. from page 3 of
26 Exhibit # 38 (the meta-data report from the video (i.e. Exhibit 40)) do not
27 match the coordinates entered into GOOGLE MAPS by the witness Eric
Thomas who created Exhibit # 37: 45°46'54.1 "N 122°33'**26.10**"W.
Specifically, the Longitude from Exhibit #38 does not match the
Longitude used to create Exhibit # 37. The Jurors were shown [and the
record is] that Exhibit #37, the Google Earth Map, contains a location

- 27
1. DEFENDANT'S MOTION TO DISMISS
COUNT 1, PURSUANT TO CrR 7.4,
 2. DECLARATION IN SUPPORT OF THE
MOTION TO DISMISS
 3. ARGUMENT IN SUPPORT

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which was not connected to any testimony in this matter, and specifically with respect to Exhibit # 38.

No testimony was offered to explain why the coordinates set out on page 3 of Exhibit #38 (45°46'54.12"N 122°33'28.08"W) and those used to create Exhibit #37 (45°46'54.1 "N 122°33'26.10"W.) don't match . No testimony was offered to explain what it means when coordinates are off in this manner, i.e. when they are entered in Degrees, Minutes, and Seconds into Google Maps inaccurately.

6. No witness testified to ever having been located at Goodwill and having seen the video contained in exhibit # 40. No witness offered any testimony that the floor was the floor of the Goodwill located in Battleground. No witness offered any testimony that the ceiling was the ceiling of the Goodwill located in Battleground. No witness offered any testimony that the floor was the floor of a Goodwill facility or building. No witness offered any testimony that the ceiling was the ceiling of a Goodwill facility or building. There is no testimony or evidence relating to Exhibit # 40, other than that provided by Eric Thomas. Eric Thomas testified that he has a limited law enforcement commission, and in summary does not interview witnesses and only engages in analysis of evidence in his lab.

DECLARATION: I declare and certify under penalty of perjury under the laws of the State of Washington that the preceding is true and correct to the best of my knowledge.

Executed at Vancouver, Washington, this 31st day of July, 2017.


Alan E. Harvey, WSBA #25785
Attorney for the Defendant

III. ARGUMENT

A. Procedural History

On July 10, 2017, Mr. Morasch was served with a third amended information the day of trial. Count 1 of the third amended information requires that it be proven the conduct associated with the allegations be committed in the State of

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1 Washington. Mr. Morasch was in trial between July 10, 2017 and July 18, 2017.

2 The jury returned their verdict on July 19, 2017.

3 On July 14, 2017, the State called Eric Alvin Thomas to offer testimony related
4 to Exhibit #40, Exhibit # 45, Exhibit #38, and Exhibit # 37 which was the sole
5 evidence supporting the allegations in Count 1.

6
7 **B. Factual Background**

8
9 On July 14, 2017, the State called Eric Alvin Thomas. He was only witness
10 called to attempt to support the factual basis that conduct surrounding the
11 allegations contained in Count 1, as to the element that the act occurred in the
12 "County of Clark" in the "State of State of Washington."

13 Mr. Thomas' testimony surrounded Exhibit 40, (an video extracted from an I-
14 phone seized in this matter), Exhibit 45 (a still image extracted from Exhibit #40),
15 Exhibit # 38, (a three page report relating to the meta- data extracted from Exhibit #
16 40) and Exhibit # 37, (a google map purporting to be the coordinates (Latitude and
17 Longitude). Mr. Thomas in summary indicated that Exhibit #37 was created from
18 information taken from page 3 of Exhibit # 38, (the three-page report relating to the
19 meta- data extracted from Exhibit # 40). The testimony on exhibit #38 was provided
20 between 5:02:38 pm and 5:10:20 p.m on July 14, 2017.

21 Specifically, the testimony relating to page 3 of Exhibit #38 started at 5:08:58.
22 The specific information about the location of the phone with respect to the meta-
23 data of the video was provided between 5:09:19 and 5:09:39. Eric Thomas testified
24 that the report (Exhibit #38) on page 3 shows the Latitude and Longitude of where
25 the phone was located when exhibit # 40, a video was taken. At 5:09:19, Mr.
26 Thomas, testified that the coordinates from the page 3 of Exhibit #38 indicate that
27 the video was taken at a location with the Longitude and Latitude (Exhibit #38)

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2. COUNT 1, PURSUANT TO CrR 7.4,
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specifically, "45 degrees 46 minutes and 54.12 seconds North and 122 degrees, 33 Minutes and 28.12 seconds West" (45°46'54.12"N 122°33'28.08"W).

Between 5:10:23 p.m. 5:12:13 minutes Mr. Vitasovic engaged in the following exchange with Mr. Thomas with respect to Exhibit #37 (a Google Map with the Coordinates of 45°46'54.1 "N 122°33'26.10"W).

L.V. I am showing what has been marked for identification as state's #37, and do you recognize that item?

E.T. I do.

L.V. And what does that appear to be?

E.T. This is a screen shot of putting degree those minutes and seconds into google maps.

L.V. Did you get receive a result?

E.T. I did.

L.V. And does that screenshot appear to be a true and accurate depiction of the result you achieved on inputting that data? (45°46'54.1 "N 122°33'26.10" W)

E.T. It does.

L.V. State seeks to admit 37 into evidence

Court: Mr. Harvey?

A.H. No objection. your honor,

Court: Exhibit #37 is admitted.

L.V. and Publishing 37 to the jury..... And if you could indicate to the jury what the result was of you imputing these coordinates?

E.T. Yes, the little red pen designates where google maps located that and it is right next to the building of Goodwill at NW 1st way and NE 112 avenue, in Battleground.

L.V. Is would hat in Clark County Washington?

E.T. Yes, that is in Clark County Washington. 5:12:13 minutes.

After, the exchange set out above, Mr. Vitasovic made a reference to earlier testimony where Mr. Thomas had used decimal coordinates with respect to Google maps and referred to percentages of error. The testimony relating to

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1 the creation of Exhibit #37 was that it was input in Degrees, Minutes and
2 Seconds. There is no testimony relating to a decimal conversion of Degrees,
3 Minutes and Seconds with respect to the creation of Exhibit #37. There is no
4 testimony to explain why the coordinates 45°46'54.12"N 122°33'28.08"W. from
5 page 3 of Exhibit # 38 (the meta-data report from the video (i.e. Exhibit 40)) do
6 not match the coordinates entered into GOOGLE MAPS by the witness Eric
7 Thomas who created Exhibit # 37: 45°46'54.1 "N 122°33' 26.10"W.

8 Specifically, the Longitude from Exhibit #38 does not match the Longitude used
9 to create Exhibit # 37. The Jurors were shown [and the record is] that Exhibit
10 #37, the Google Earth Map, contains a location which was not connected to
11 any testimony in this matter, and specifically with respect to Exhibit # 38.

12 No testimony was offered to explain why the coordinates set out on page 3 of
13 Exhibit #38 (45°46'54.12"N 122°33'28.08"W.) and those used to create Exhibit
14 #37 (45°46'54.1 "N 122°33' 26.10"W.) don't match . No testimony was offered
15 to explain what it means when coordinates are off in this manner, i.e. when they
16 are entered in Degrees, Minutes, and Seconds into Google Maps inaccurately.

17 No witness testified to ever having been located at Goodwill and having
18 seen the video contained in exhibit # 40. No witness offered any testimony
19 that the floor was the floor of the Goodwill located in Battleground. No witness
20 offered any testimony that the ceiling was the ceiling of the Goodwill located in
21 Battleground. No witness offered any testimony that the floor was the floor of a
22 Goodwill facility or building. No witness offered any testimony that the ceiling
23 was the ceiling of a Goodwill facility or building. There is no testimony or
24 evidence relating to Exhibit # 40, other than that provided by Eric Thomas. Eric
25 Thomas testified that he has a limited law enforcement commission, and in
26 summary does not interview witnesses and only engages in analysis of
27 evidence in his lab.

Instruction #13 (see Exhibit #D) is the "to convict" instruction provide to
the jury and provides follows:

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INSTRUCTION NO. ____13____

To convict the defendant of the crime of Voyeurism as charged in Count 1, each of the following five elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about April 27, 2015, the defendant knowingly viewed, photographed, or filmed the intimate areas of a second person;
- (2) That the viewing, photographing, or filming was for the purpose of arousing or gratifying the sexual desire of any person;
- (3) That the viewing, photographing, or filming was without the second person's knowledge and consent;
- (4) That the intimate areas of the second person were viewed, photographed, or filmed under circumstances where he or she had a reasonable expectation of privacy, whether in a public or private place; and
- (5) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if after weighing all the evidence you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

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1. DEFENDANT'S MOTION TO DISMISS
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1
2 **C. Issues Presented**

- 3 1. Have the CrR 7.4 a)(3 prerequisite been met?
- 4
- 5 2. Is there a insufficient evidence to prove Count 1 of the Third
- 6 Amended information requiring action pursuant to CrR 7.4
- 7 a)(3 ?
- 8
- 9 3. Does application of CrR 7.4 a)(3 require that Count 1 matter
- 10 be dismissed?
- 11

12 **D. Statement of Authorities**

- 13 1. The procedural requirements of CrR 7.4 a)(3 have been
- 14 satisfied.

15 Mr. Morash has stated his through a timely motion and affidavit set out an

16 argument that there was insufficient evidence as to a material element as to count 1.

17 The verdict in this matter was published to Mr. Morasch on July 19, 2017. July 29,

18 2017 was a Saturday. This motion was filed on June 31, 2017. CrR 7.4(b requires

19 that the motion be filed within 10 days of the verdict. CrR 8.1 indicates that timing

20 issues for motions are controlled by CR 6. CR 6(a provides that if the last day of the

21 period will be computed unless it falls on a Saturday or Sunday. If this occurs CR 6(a

22 provides that the last day will be determined as the following Monday. Monday, July

23 31, 2017 is the ten day for computation purposes. Further, Mr. Morasch has

24 provided the court with a factual record replete with citations to the record and other

25 material for the court's consideration. It is clear that the procedural requirements of

26

- 27 1. DEFENDANT'S MOTION TO DISMISS
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CrR 7.4 have been satisfied by the above motion, declaration, and the attached documents.

2. The defendant has established that there was not sufficient evidence to support an essential element as to count 1 of the Third Amended Information.

Pursuant to CrR 7.4 (a) (3) a defendant may bring a motion for arrest of judgment for "insufficiency of the proof of a material element of the crime." CrR 7.4(a). The evidence presented in a criminal trial is legally sufficient to support a guilty verdict if any rational trier of fact, viewing the evidence in a light most favorable to the state, could find the essential elements of the charged crime beyond a reasonable doubt. *State v. Longshore*, 141 Wash.2d 414, 420, (2000).

In the instance case Count 1, specifically Jury Instruction 13 the elements to be proven are set out below:

- (1) That on or about April 27, 2015, the defendant knowingly viewed, photographed, or filmed the intimate areas of a second person;
- (2) That the viewing, photographing, or filming was for the purpose of arousing or gratifying the sexual desire of any person;
- (3) That the viewing, photographing, or filming was without the second person's knowledge and consent;
- (4) That the intimate areas of the second person were viewed, photographed, or filmed under circumstances where he or she had a reasonable expectation of privacy, whether in a public or private place; and
- (5) That any of these acts occurred in the State of Washington.**

In the instant case the issue is rather simple, the state apparently offered an exhibit, #37, that contained incorrect information. Eric Thomas indicated that he had used the coordinates from Exhibit #38 of 45°46'54.12"N 122°33'28.08"W. to create Exhibit #37. Unfortunately, the record is clear, the wrong coordinates were typed into the Google map function. i.e. the coordinates of 45°46'54.1 "N 122°33'

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1 **26.10"W.** Exhibit #38 (45°46'54.12"N 122°33'**28.08"W**) and those used to create
2 Exhibit #37 (45°46'54.1 "N 122°33' **26.10"W**. don't match.

3 Further, no witness testified to ever having been located at Goodwill and
4 having seen the video contained in exhibit # 40. No witness offered any testimony
5 that the floor was the floor of the Goodwill located in Battleground. No witness
6 offered any testimony that the ceiling was the ceiling of the Goodwill located in
7 Battleground. No witness offered any testimony that the floor was the floor of a
8 Goodwill facility or building. No witness offered any testimony that the ceiling was
9 the ceiling of a Goodwill facility or building. There is no testimony or evidence
10 relating to Exhibit # 40, other than that provided by Eric Thomas. Eric Thomas
11 testified that he has a limited law enforcement commission, and in summary does
12 not interview witnesses and only engages in analysis of evidence in his lab.

13 No rational trier of fact on the record that exists in this matter could conclude that
14 element # 5 in instruction #13 had been proven beyond a reasonable doubt. This is
15 true even when viewing the evidence in a light most favorable to the state. Count
16 one was not proven.

17
18 **3. CrR 7.4 C) Requires That Count 1 Matter Be Dismissed If There Was**
19 **Not Sufficient Evidence On A Essential Element Of The Crime.**

20 **CrR 7.4(c) provides in part that:** "If judgment was arrested because there
21 was no proof of a material element of the crime the defendant shall be dismissed."

22 In the instant case, the defendant has demonstrated that there was no proof
23 of a material element as to count 1, and therefore, dismissal is required.

- 24
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26
27
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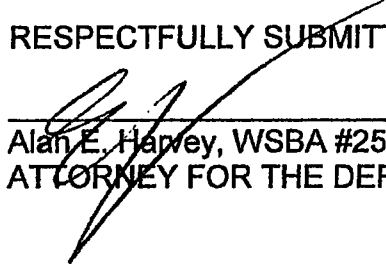
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IV. CONCLUSION

In light of the foregoing, the Defendant respectfully requests that the Court grant the Defendant's motion to dismiss Count 1.

DATED this 31st day of July, 2017

RESPECTFULLY SUBMITTED:


_____/s/
Alan E. Harvey, WSBA #25785
ATTORNEY FOR THE DEFENDANT

1. DEFENDANT'S MOTION TO DISMISS
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Exhibit A

Page A.1-A.2

FILED

JUL 10 2017

Scott G. Weber, Clerk, Clark Co.

1142

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,

Plaintiff,

v.

MATTHEW RICHARD MORASCH

Defendant.

THIRD AMENDED INFORMATION

No. 15-1-01170-7

(VPD 15-9679)

COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

COUNT 01 - VOYEURISM - 9A.44.115

That he, MATTHEW RICHARD MORASCH, in the County of Clark, State of Washington, on or about April 27, 2015, for the purpose of arousing and gratifying the sexual desire of any person, did knowingly view, photograph or film: the intimate areas of another person, without that person's knowledge and consent and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place; contrary to Revised Code of Washington 9A.44.115(2)(b).

COUNT 02 - ATTEMPTED VOYEURISM - 9A.44.115 /9A.28.020(3)(d)

That he, MATTHEW RICHARD MORASCH, in the County of Clark, State of Washington, on or about June 15, 2015, with intent to commit the crime of VOYEURISM, did any act that was a substantial step toward the commission of the crime of Voyeurism—the elements of which are for the purpose of arousing and gratifying the sexual desire of any person, did knowingly view, photograph or film: the intimate areas of another person, to wit: K.K.G., without that person's knowledge and consent and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place; contrary to Revised Code of Washington 9A.44.115(2)(a) and/or (b) and 9A.28.020(3)(d).

COUNT 03 - ATTEMPTED VOYEURISM - 9A.44.115 /9A.28.020(3)(d)

That he, MATTHEW RICHARD MORASCH, in the County of Clark, State of Washington, on or about April 27, 2015, with intent to commit the crime of VOYEURISM, did any act that was a substantial step toward the commission of the

SECOND AMENDED INFORMATION - 1
kaw

Arthur D. Curtis Children's Justice Center
P.O. Box 61992
Vancouver Washington 98666
(360) 397-6002

335
LTM

1 crime of Voyeurism—the elements of which are for the purpose of arousing and
2 gratifying the sexual desire of any person, did knowingly view, photograph or film: the
3 intimate areas of another person without that person's knowledge and consent and
4 under circumstances where the person has a reasonable expectation of privacy,
5 whether in a public or private place; contrary to Revised Code of Washington
6 9A.44.115(2)(a) and/or (b) and 9A.28.020(3)(d).

7 ANTHONY F. GOLIK
8 Prosecuting Attorney in and for
9 Clark County, Washington

10 Date: July 10, 2017

11 BY: _____
12 Luka Vitasovic, WSBA #39850
13 Deputy Prosecuting Attorney

14 DEFENDANT: MATTHEW RICHARD MORASCH			
15 RACE: W	SEX: M	DOB: 03/23/1975	
16 DOL: MORASMR255D3 WA		SID: WA19212347	
17 HGT: 508	WGT: 195	EYES: GRY	HAIR: BRO
18 WA DOC:		FBI:	
19 LAST KNOWN ADDRESS(ES):			
20 HOME - 112 NE 148TH ST, VANCOUVER WA 98685			

Exhibit B
Pages B.1

Exploded view of Exhibit #37



Exploded view of Exhibit #38

(Page 3 or Exhibit # 38)

GPS Altitude	: 86.787 m
GPS Altitude Ref	: Above Sea Level
GPS Latitude	: 45 deg 46' 54.12"
N	
GPS Longitude	: 122 deg 33' 28.08"
W	
Image Size	: 1920x1080
Megapixels	: 2.1
Rotation	: 90
GPS Position	: 45 deg 46' 54.12"
N, 122 deg 33' 28.08" W	

Page 3

The Coordinates from **Exhibit # 38** (the meta data report from the video on the phone with GPS Coordinates):
45°46'54.12"N 122°33'28.08"W.

These Coordinates DO NOT match the coordinates entered into GOOGLE MAPS by the witness Eric Thomas in **Exhibit # 37**:

45°46'54.1 "N 122°33'26.10"W.

Specifically, the Longitude from the phone does not match the Longitude used to create Exhibit # 37.

The State never offered proof of where the phone was actually located. The GPS information of Longitude 122°33'28.08", which was embedded in the video purported to have been taken on or about April 27, 2015 was not the information used to create exhibit # 37. This Longitude (122°33'28.08") was never connected to any physical location by testimony or any other evidence.

The Jurors were shown [and the record is] that Exhibit #37, the Google Earth Map, contains a location which was not connected to any testimony in the matter with respect to Exhibit # 38.

No testimony was offered to explain why these coordinates didn't match. No testimony was offered to explain what it means when coordinates are off in this manner, i.e. when they are entered in Degrees, Minutes, and Seconds into Google Maps inaccurately.

Therefore, there is insufficient evidence that the phone was in the State of Washington, which is a material element of count 1, and count 1 must be dismissed.

Exhibit D

Pages D.1

INSTRUCTION NO. 13

To convict the defendant of the crime of Voyeurism as charged in Count 1, each of the following five elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about April 27, 2015, the defendant knowingly viewed, photographed, or filmed the intimate areas of a second person;
- (2) That the viewing, photographing, or filming was for the purpose of arousing or gratifying the sexual desire of any person;
- (3) That the viewing, photographing, or filming was without the second person's knowledge and consent;
- (4) That the intimate areas of the second person were viewed, photographed, or filmed under circumstances where he or she had a reasonable expectation of privacy, whether in a public or private place; and

(5) That any of these acts occurred in the State of Washington.

NOT PROVEN

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if after weighing all the evidence you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

NOTE:

There is insufficient evidence that the act alleged to be Voyeurism, was committed in the State of Washington, which is a **material element** of count 1 and count 1 must be dismissed. The Coordinates from Exhibit # 38 (the meta data report from the video on the phone with GPS Coordinates):

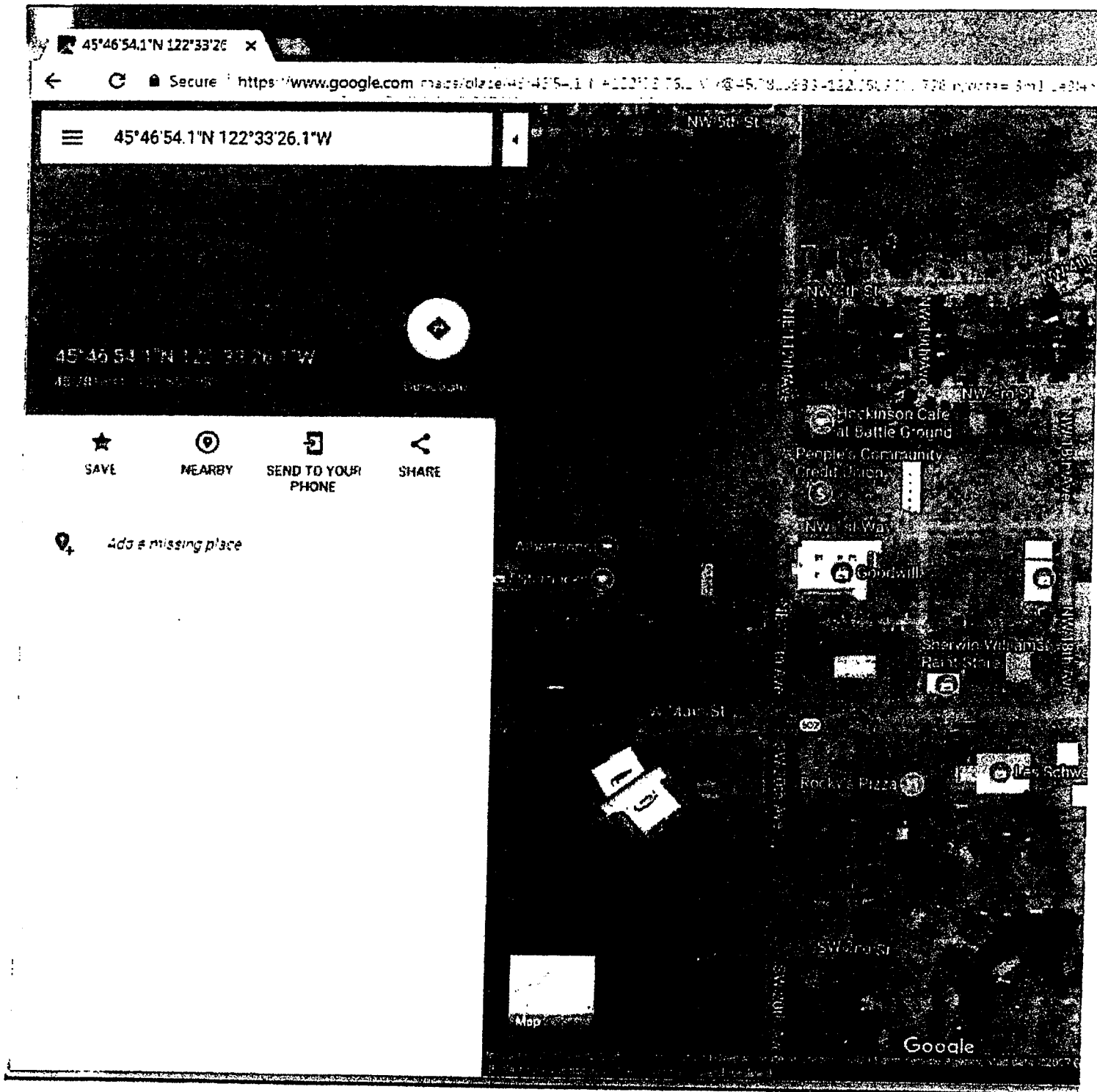
45°46'54.12"N 122°33'28.08"W.

These Coordinates DO NOT match the coordinates entered into GOOGLE MAPS by the witness Eric Thomas in Exhibit # 37:

45°46'54.1 "N 122°33'26.10"W.

No testimony was offered to explain why these coordinates didn't match. No testimony was offered to explain what it means when coordinates are off in this manner, i.e. when they are entered in Degrees, Minutes, and Seconds into Google maps inaccurately.

Exhibit E
Pages E.1-E.3



EXIF for video IMG_1860.mov

Audio Bits Per Sample	: 16
Audio Sample Rate	: 44100
Purchase File Format	: mp4a
Handler Type	: Metadata Tags
Creation Date (und-US)	: 2015:04:27
18:55:44-07:00	
Model (und-US)	: iPhone 5s
Software (und-US)	: 8.2
GPS Coordinates (und-US)	: 45 deg 46' 54.12"
N, 122 deg 33' 28.08" W, 86.787 m	Above Sea Level
Make (und-US)	: Apple
Software Version	: 8.2
Content Create Date	: 2015:04:27
18:55:44-07:00	
GPS Coordinates	: 45 deg 46' 54.12"
N, 122 deg 33' 28.08" W, 86.787 m	Above Sea Level
Model	: iPhone 5s
Make	: Apple
Creation Date	: 2015:04:27
18:55:44-07:00	
Software	: 8.2
Avg Bitrate	: 12.8 Mbps
GPS Altitude	: 86.787 m
GPS Altitude Ref	: Above Sea Level
GPS Latitude	: 45 deg 46' 54.12"
N	
GPS Longitude	: 122 deg 33' 28.08"
W	
Image Size	: 1920x1080
Megapixels	: 2.1
Rotation	: 90
GPS Position	: 45 deg 46' 54.12"
N, 122 deg 33' 28.08" W	

INSTRUCTION NO. 13

To convict the defendant of the crime of Voyeurism as charged in Count 1, each of the following five elements of the crime must be proved beyond a reasonable doubt:

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- (3) That the viewing, photographing, or filming was without the second person's knowledge and consent;
- (4) That the intimate areas of the second person were viewed, photographed, or filmed under circumstances where he or she had a reasonable expectation of privacy, whether in a public or private place; and
- (5) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if after weighing all the evidence you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.
